

ORIGINAL

MICHAEL TORRES JAIMES, (No. 826611198)
FCI Terminal Island
Federal Correctional Institution
1299 Seaside Avenue
Terminal Island, CA 90731

Appellant/Defendant
In Pro Se

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUL 27 2007
at 9 o'clock and 16 mid M.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL TORRES JAIMES,

Defendant.

CR. NO. CR1031005011SOM

EX PARTE APPLICATION FOR
APPOINTMENT OF COUNSEL FOR A
MOTION TO VACATE, SET ASIDE OR
CORRECT SENTENCE BY A PERSON IN
FEDERAL CUSTODY 28 USC § 2255;
POINTS AND AUTHORITIES AND
DECLARATIONS

~~FILED UNDER SEAL, IN CAMERA~~

If it please this Honorable Court:

Now comes Defendant/Appellant, Michael Torres Jaimes, appearing pro se, and respectfully moves the Honorable Court, pursuant to the Criminal Justice Act of 1984, 18 USC 3006A(b), for an Order in which a conflict free counsel is appointed to represent Defendant in his Motion to vacate, set aside or correct sentence by a person in federal custody, from a judgment of this Honorable Court.

Defendant is an indigent person within the meaning of 28 USC 1915(a) and is financially unable to pay the costs for prosecuting this Motion or give bond therefor.

1 Defendant has filed a Financial Declaration, CJA form 23, under separatel
 2 cover this day (Herein Exhibit A).

3 Defendant, who has nll legal training, or abilitieel to communicate
 4 in any other way by verbal communication and oral understanding, would
 5 requestt the court consider appointing an attorney, that can visit
 6 Defendant in his place of incarceration, in Terminal Island, California.

7
 8 Dated: June 24 2007

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 11 
 MICHAEL TORRES JAIMES

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 14 POINTS AND AUTHORITIES

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 16 PETITIONER/MOVANT CANNOT PROPERLY DEMONSTRATE PREJUDICE CAUSED BY
 17 INEFFECTIVE ASSISTANCE OF FORMER COUNSEL WITHOUT APPOINTMENT OF COUNSEL.

18
 19 A criminal defendant in both federal and state court has the right
 20 to be representelld by counsel at livery stagll of proceeeding including
 21 through appeal lls governed by Rule 44 FRCP and United Statel Code 3006a
 22 Rule 44 FRCP provides in pertinenet part:

23 (a) Right to Appointelld Counsel.

24 A defendant who is aunable to obtain counsel is entitled to have counsel
 25 appointelld llo representt the defendant at every stage of the proceeeding
 26 frllm initial appearance thruu appeal, unless the defendant waiveel this right.

27 Gideon v. Wainwright settled the quelltion llf whether all criminal
 28 defendants are entitled to counsel (Gideon v. Wainwright (1963) 372 US
 335 (9 L. Ed 2d 799, 83 S. Ct. 792, 93 ALR 2d 733)). The right to counsel

1 include the right to the use of any experts that will assist counsel in
2 preparing a defense. See 18 USCA § 3006a(c), *Mason v. State of Arizona*
3 (9th Cir. 1974) 504 F. 2d 1345, 1351).

4
5 In *Gideon v. Wainwright*, 372 US 335 (1963), the Sixth Amendment's
6 requirement that the "accused shall enjoy the right ...to have the Assistance
7 of Counsel for his defense was " made obligatory on the States by the
8 Fourteenth Amendment, the Court holding that "in our adversary system
9 of criminal justice, any person haled into court, who is too poor to hire
10 a lawyer, cannot be assured a fair trial unless counsel is provided for
11 him" At 344 83 S. Ct at 796. We continue to adhere to these principles.

12
13 In *Anderl v. State of Cal*, 386 US 738, 741 (1967), the United States
14 Supreme Court wrote that:

15
16 Beginning with *Griffin v People of the State of Illinois*, 351 US
17 12 (1956) where it was held that equal justice was not afforded an
18 indigent appellant where the nature of the review "depends on the amount
19 of money he has" at 19, 76 S Ct at 591, and continuing through *Douglas*
20 *v. People of the State of California*, 372 US 353 (1963), this Court has
21 consistently held invalid those procedures where the "rich man, who
22 appeals as of right, enjoys the benefit of counsel's examination into the
23 record, research of the law, and marshalling of arguments on his behalf,
24 while the indigent defendant, already burdened by a preliminary determination
25 that his case is without merit, is forced to shift for himself". At
26 358, 83 S. Ct at 817.


27 Indeed in the federal courts, the advice of counsel has long been required
28 whenever a defendant challenges a certification that an appeal is not

1 taken in good faith, Johnson v. United States, 352 US 565 (1957), and
2 such representation must be in the role of an advocate, Ellis v. US, 356 US
3 674, 675, 975 (1958), rather than as amicus curiae. In Ellis, supra, we
4 Concluded:

5 "If counsel is convinced, after conscientious investigation, that
6 the appeal is frivolous, of course, he may ask to withdraw on that
7 account. If the court (386 US 738, 742) is satisfied that counsel
8 has diligently investigated the possible ground of appeal, and
9 agrees with counsel's evaluation of the case, then leave to withdraw
10 may be allowed and leave to appeal may be denied" at 675, 78 CT at 975.

11 Where a defendant has certain disadvantages of speech, and legal
12 comprehension, as is in this case in chief, it is appropriate that a
13 member of a bar association in whom defendant has confidence and has
14 access to, should be appointed.

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16 Respectfully submitted,

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18 MICHAEL TORRES JAIMES
19 Defendant In Prill Se 

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21 Additional Request for Special Consideration:

22 Given my very limited capacities in the English Language,
23 and in legalese especially, I request any consideration this
24 court could provide, in time extension, and other assistance
25 in permitting the undersigned to file a 2255.